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In the Supreme Court

of the United States

OCTOBER TERM, 1967

No. 1017

JOHN HOUSER,

Petitioner,

v.

J. J. O'LEARY, Deputy Commissioner,
Fourteenth Compensation District,

and

AMERICAN MAIL LINE, LTD., a corporation,

and

FIREMAN'S FUND INSURANCE COMPANY,
a corporation,

Respondents.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals
for the Ninth Circuit

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J. J. O'LEARY, Deputy Commissioner,
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AMERICAN MAIL LINE, LTD., a corporation,

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FIREMAN'S FUND INSURANCE COMPANY,
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Respondents.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals
for the Ninth Circuit

The Petitioner, John Houser, prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW
AND ORDER EXTENDING TIME FOR FILING PETITION

This is a longshoreman's claim for benefits under the Longshoreman's and Harborworker's Compensation Act as amended, 33 U.S.C.A. § 901 et seq.

The opinion of the respondent Deputy Commissioner was rendered on July 15, 1965. The opinion is unreported, and a copy is appended to this Petition as "Appendix A."

A libel was thereafter filed in the United States District Court for the District of Oregon. The opinion of the District Court was rendered on March 19, 1966, and is reported in 253 F. Supp. 417. A copy of the opinion is appended to this Petition as "Appendix B."

The opinion of the Court of Appeals for the Ninth Circuit was rendered on September 27, 1967, and is reported at 383 F.2d 730. A copy is appended to this Petition as "Appendix C."

On December 18, 1967, Mr. Justice Abe Fortas signed an Order extending the time for filing this Petition to January 15, 1968.

JURISDICTION

The jurisdiction of this Court to review the judgment of the Court of Appeals for the Ninth Circuit by writ of certiorari is conferred by 28 U.S.C.A. § 1245(1) and § 2101(c).

The jurisdiction of the District Court was conferred by 33 U.S.C.A. § 921, and 5 U.S.C.A. §§ 701-706.

QUESTION PRESENTED

The sole question presented by this Petition is whether a longshoreman, injured on a dock extending into the navigable waters of the Willamette River while loading a vessel berthed at the pier, is entitled to benefits under the Longshoremen's & Harbor Workers' Compensation Act.

CONSTITUTIONAL PROVISIONS AND STATUTES

The following Constitutional provisions and statutes are material to our argument in support of the Petition.

The Constitution of the United States provides:

> "Article I, Section 8. The Congress shall have power . . . to make all laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Office thereof.
>
> "Article III, Section 2. The judicial Power shall extend . . . to all Cases of admiralty and maritime Jurisdiction."

The Longshoremen's and Harbor Workers' Compensation Act, as amended, 33 U.S.C.A. § 901 et seq., provides:

"Section 903. *Coverage.*

(a) Compensation shall be payable under this Chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any dry dock) and if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law. . . ."

The Admiralty Extension Act, 46 U.S.C.A. § 740 provides:

"The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land."

STATEMENT OF THE CASE

On May 1, 1965, the petitioner was employed by American Mail Line, Ltd., an employer subject to the provisions of the Longshoremen's and Harbor Workers' Compensation Act (R. 1, 8). The petitioner was one of a gang of longshoremen (R. 41) who were engaged in loading the vessel GUAM BEAR (R. 21), which was berthed at Terminal No. 1, Berth No. 7, on the Willamette River in Portland, Oregon (R. 21).

The length of the pier on its face at Berth No. 7, is 1,100 feet (R. 28), and the face extends out 34 feet over the water (R. 26-27, 39-40). At one end of the

dock is a slip, 630 feet long, at which ocean going vessels also berth (R. 30-31). Along the face of the dock, and running almost its entire length, are two lines of railroad track, the center of the outermost tracks being eight and one-half feet from the river edge of the dock (R. 27-28).

The water of the Willamette River runs beneath the dock, and small boats sometimes navigate under the dock (R. 39-40).

On the date in question, the petitioner was working on a gondola car on the railroad track closest to the ship (R. 42). which was berthed at the face of the dock (R. 39). He was one of two slingmen engaged in hooking up a load of creosoted piling on the gondola car to the ship's gear for loading aboard the vessel (R. 40-42). While engaged in performing this duty, the petitioner suddenly appeared to straighten up, slipped, and fell down on the shoreward side of the car, suffering injuries (R. 41-43, 58-59).

Slingmen are regular members of a gang of longshoremen, the rest of whom work aboard the ship (R. 46). Slingmen sometimes go aboard the ship for the purpose of getting to barges on the water, on which they frequently work (R. 41, 60). They also work directly and immediately with the man on the ship in rigging the vessel, handling parts of the ship's rigging in the process when it is convenient to do so (R. 60).

On June 16, 1965, Deputy Commissioner O'Leary

held a hearing, and on July 15, 1965, made and entered a compensation order, rejecting the petitioner's claim for benefits under the Longshoremen's and Harbor Workers' Act upon the ground that the petitioner's injuries "did not occur upon the navigable waters of the United States * * *." (See Appendix A.) The petitioner then instituted proceedings in admiralty in the United States District Court for the District of Oregon pursuant to 33 U.S.C.A. § 921 and 5 U.S.C.A. §§ 701-706 for the purpose of reviewing the Deputy Commissioner's determination. The petitioner's employer and compensation insurance carrier were permitted to intervene (R. 5, 7). All parties moved for a summary judgment (R. 11, 137, 139), and the District Court, Honorable Gus J. Solomon, Judge, rendered an opinion upholding the determination by the Deputy Commissioner (R. 141). Judgment was accordingly entered granting the motions of the respondents for summary judgment (R. 145). The petitioner appealed to the Circuit Court of Appeals for the Ninth Circuit, which affirmed the judgment below. (See Appendix C). The Circuit Court agreed with the District Court that an injury upon a pier is not "an injury occurring upon the navigable waters of the United States" within the purview of Section 903 of the Longshoremen's and Harbor Workers' Compensation Act.

REASONS RELIED UPON FOR GRANTING THE WRIT

There are two reasons why this writ ought to be granted. *First*, the decisions below are contrary to the *ratio decidendi* of *Calbeck* v. *Traveler's Insurance Co.*, 370 U.S. 114, 82 S. Ct. 1196 (1962). *Second*, the issue presented here is vital to the administration of the Longshoremen's and Harbor Workers' Act and requires an authoritative decision of this Court. Because of a narrow interpretation of the Act in the circuit and district courts, the compensation rights of harbor workers are sinking into confusion which it was the purpose of Congress in passing the Act, and more recently of this Court in *Calbeck*, to bring to an end.

The issue presented by this case is whether a longshoreman injured on a dock while loading a ship is entitled to coverage under the Longshoremen's and Harbor Workers' Compensation Act. The issue is no stranger to the courts. There are, in addition to ours, two petitions for certiorari involving the same problem presently pending before this Court: *Andrew Nicholson* v. *C. D. Calbeck, Deputy Commissioner, et al*, No. 877, (October Term, 1967); *James D. McCollough* v. *The Travelers Insurance Company and Levingston Shipbuilding Company*, No. 788 (October Term, 1967). Both of these petitions are for review of decisions of the United States Court of Appeals for the Fifth Circuit. In addition, there are now pending before the United States Court of Ap-

peals for the Fourth Circuit rehearings in the case of *Albert Avery* v. *Jerry C. Oosting, et al,* Docket No. 10,323; in the case of *William H. Johnson* v. *John P. Trainer, Deputy Commissioner, et al,* Docket No. 10,298; and in the case of *Julia T. Kloseck* v. *John P. Trainer, Deputy Commissioner,* Docket No. 10,299, all of which involve issues analogous to ours. It has been estimated that one of every two longshoremen is injured on the job each year and that fully 25% of all injuries to longshoremen occur on wharves or piers as the men work back and forth between the wharf and the ship loading and unloading cargo. (42 New York University of Law Journal 331, 344, footnote 114; footnote 67 at p. 337; National Academy of Sciences—National Research Council, Longshore Safety Survey (Wash., D. C., 1956) p. 1 et seq.).

Our problem is created by the language which Congress chose to describe the conditions for compensability of maritime injuries. Section 903(a) provides that compensation shall be payable "only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any drydock) and if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law * * *."

Legislative History of the Act

To understand the purpose and meaning of this language, as well as our contention that the lower

court decisions in this case fail to give effect to the opinion of this Court in *Calbeck* v. *Traveler's Insurance Co.*, it is necessary to review the history of Section 903.

The occasion and necessity for the Longshoremen's and Harbor Workers' Act was a series of cases decided by this Court concerning the application of State law within the admiralty jurisdiction. In *Southern Pacific Co.* v. *Jensen*, 244 U.S. 205, 39 S. Ct. 524 (1917), this Court ruled that Federal maritime law occupied the area of admiralty jurisdiction conferred upon the Federal Government by Article III, Section 2 of the Constitution, and held that State workmen's compensation laws could not constitutionally be applied to an injury occurring upon navigable waters within the Federal admiralty jurisdiction to an employee engaged in maritime employment, because to do so would destroy the uniformity of the Federal maritime law which the Constitution was intended to establish. The employee injured in *Jensen* was a longshoreman engaged in unloading cargo, and the injury was sustained on a gangplank over navigable waters between the vessel and the wharf. See *Calbeck* v. *Traveler's Insurance Co.*, 370 U.S. 114, 117 (1962). Two Federal statutes designed to permit the application of State workmen's compensation laws to injuries in maritime employment upon navigable waters were later held to be unconstitutional. *Knickerbocker Ice Co.* v. *Stewart*, 253 U.S. 149, 40 S. Ct. 438 (1920); *Washington* v. *Dawson*, 264 U.S. 219, 44 S. Ct. 302 (1924).

Perhaps in heed of the criticisms leveled at its decisions in *Jensen* and *Knickerbocker*, and in recognition of the harsh results engendered by these cases, this Court formulated the "local concern" doctrine which permitted workmen to recover under State workmen's compensation laws for injuries occurring upon navigable waters within the admiralty jurisdiction, provided that the activities and contracts of maritime employment of the employees affected were matters of merely "local concern," not directly related to navigation or commerce. This Court reasoned that in such circumstances the application of State procedures and remedies would not destroy the uniformity of the Federal maritime law required by the Constitution. *Grant-Smith-Porter* v. *Rohde*, 257 U.S. 469, 42 S. Ct. 157 (1922).

At the same term, this Court held that State workmen's compensation could be applied, without reference to the "local concern" doctrine, by direct operation of state law for injuries occurring upon extensions of land into navigable waters, such as piers and wharves, because injuries upon land and such extensions were within the recognized non-maritime area of state jurisdiction. *Industrial Commission* v. *Nordenholt*, 259 U.S. 263, 42 S. Ct. 473 (1922) (injury to longshoreman working on a pier).

In the context of these decisions, the Longshoremen's Act was drafted and adopted. As originally drafted, and sponsored by the International Longshoremen's Association and unions representing ship

repairmen and allied trades, the Bill would have applied to "any employment performed on a place within the admiralty jurisdiction of the United States, except employment of local concern and of no direct relation to navigation or commerce * * *." Hearings on S. 3170, Senate Judiciary Committee, 69th Congress, First Sess., p. 2 (hereafter "Senate Hearings"). In that form, the bill was apparently designed to provide coverage only for injuries within the admiralty tort jurisdiction where they were not compensable under state workmen's compensation acts, whether applying of their own force or under the new "local concern" doctrine.

At the Senate Hearings, representatives of the interested labor organizations testified generally in support of the Bill, explaining the need for it as a result of the *Jensen*, *Knickerbocker* and *Dawson* decisions, and noting that all but six of the states had workmen's compensation laws. Senate Hearings, pp. 18-44, 37. An attorney for the unions also explained that the locus of the injury was the sole test for admiralty tort jurisdiction and that longshoremen injured while on a wharf or pier were within the tort jurisdiction of the states, which could validly provide compensation for them by state laws. *Id.* at pages 29-31. He noted that if a longshoreman fell while going between the ship and the wharf and hit the wharf he would be covered under the local compensation law, but if he fell between the ship and the wharf he would be denied state compensation. *Id.* at 29-30.

The proposed exclusionary language "except employment of local concern and of no direct relation to navigation or commerce" was described by employer groups as being unnecessarily broad and ambiguous, and as being a potential breeder of litigation. *Id.* at pages 57, 91, 95. Apparently in response to these criticisms the Senate Committee recommended the "upon navigable waters" limitation now embodied in 33 U.S.C.A. § 903 (a) which, of course, does not include the "local concern" phraseology. Senate Report 973, 69th Congress, First Sess., p. 2. The Senate Judiciary Committee made it clear that the Bill was made necessary by this Court's decisions in *Jensen*, *Knickerbocker* and *Dawson*, and that it was designed to cover repairmen, longshoremen and other amphibious harborworkers. Senate Report 973, supra, pp. 16-17. The Committee noted that under its recommended language "injuries occurring in loading or unloading are not covered unless they occur on the ship or between the wharf and the ship *so as to bring them within the maritime jurisdiction of the United States.*" *Id.* p. 16. (Emphasis added). The language recommended by the Senate Judiciary Committee, was, of course, the language now found in 33 U.S.C.A. 903(a). The Committee's report indicates that in use of the language "navigable waters" it was exhausting the limits of what was then felt to be the maritime jurisdiction of the United States over personal injuries.

In a series of cases arising after the adoption of the Act in 1927 (Mar. 4, 1927, C. 509, § 1, 44 Stat.

1424), it soon became apparent that the original Congressional concept, derived from *Jensen*, of an impassable barrier between federal maritime and state non-maritime jurisdiction was inaccurate. Problems of construction arose first with the "local concern" doctrine. Before the passage of the Act, the Court had held various activities to be subject to State law because, although maritime, they were of sufficiently local concern to support State jurisdiction. *Grant-Smith-Porter Ship Co.* v. *Rhode*, 257 U.S. 469, 42 S. Ct. 157 (1922). In *Parker* v. *Motor Boat Sales, Inc.*, 314 U.S. 244, 62 S. Ct. 221 (1941), this Court held that there could be concurrent Federal and State compensation coverage in areas of "local concern." There followed the doctrine of the "twilight zone." *Davis* v. *Department of Labor and Industries*, 317 U.S. 249, 63 S. Ct. 225 (1942). This, too, permitted coverage under either State or Federal law, despite the language of 33 U.S.C.A. § 903 which limits Federal coverage to situations where compensation "* * * may not validly be provided by State law."

Then, in *Avondale Marine Ways* v. *Henderson*, 347 U.S. 366, 74 S. Ct. 100 (1953), this Court held that a workman on a marine railway came within the jurisdiction of the Longshoremen's and Harbor Workers' Compensation Act, because a marine railway was held to be a dry dock, even though the vessel being worked on was 400 feet from the water, and clearly subject to State coverage. (See the opinion in the court below, 201 F.2d 437, 438, C.A. 5, 1953).

Thus, from the original position in which the two spheres of authority were thought to be mutually exclusive, it gradually became apparent that there was a considerable area of overlap including activities of "local concern," "twilight zone" activities, and marine railways on land, for all of which the States could validly provide compensation, but for which compensation was nevertheless held to be afforded under the Longshoremen's and Harbor Workers' Compensation Act, despite the statutory language.

While this area of concurrent jurisdiction was being delineated in the courts, the tort admiralty jurisdiction of the United States was at the same time moving inland from the water's edge, *Strika* v. *Netherlands Ministry of Traffic*, 185 F.2d 555, 558 (C.A. 2, 1950), a move memorialized in the Admiralty Extension Act of 1948, which extended the admiralty and maritime jurisdiction of the United States to "all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land." (46 U.S.C.A. § 740, June 19, 1948, C. 256, 62 Stat. 496). This Court has not only upheld the Admiralty Extension Act against Constitutional challenge, but has indicated that it will not be construed in a niggardly way. *Gutierrez* v. *Waterman's Steamship Corporation*, 373 U.S. 206, 210, 83 S. Ct. 1185 (1963).

At the same time, the "contract" admiralty jurisdiction of the Federal courts, which has always de-

pended upon *status* rather than *situs*, *North Pacific S. S. Co.* v. *Hall Bros. Co.*, 249 U.S. 119, 39 S. Ct. 221 (1919), was moving gradually into the field of personal injury law under the guidon of "express" and "implied warranties" of the stevedore. *American Stevedores* v. *Porello*, 330 U.S. 446, 67 S. Ct. 847 (1947); *Ryan Stevedoring Co.* v. *Pan-Atlantic S. S. Corp.*, 350 U.S. 124, 76 S. Ct. 232 (1956); *Crumady* v. *Joachim Hendrik Fisser*, 358 U.S. 423, 79 S. Ct. 445 (1959); *Italia Societa* v. *Oregon Stevedoring Co.*, 376 U.S. 315, 84 S. Ct. 748 (1964). This line of authority finds its culmination in *Sanderlin* v. *Old Dominion Stevedoring Corporation*, 45 A.M.C. 1691 (C.A. 4th, October 26, 1967) (Court of Appeals Docket No. 11,211), in which a cargo checker injured on a pier through the negligence of the defendant stevedore was permitted to recover damages by a suit in admiralty as the third-party beneficiary of an express warranty of workmanlike performance in the contract between the stevedore and the plaintiff's employer. The opinion (by Judge Sobeloff) makes it clear that the result would be the same if the warranty were implied rather than express.

Calbeck v. Traveler's Insurance Co.

This, then, was the history and maincurrent of admiralty law involving the Act when the Court decided *Calbeck* v. *Traveler's Insurance Co.*, 370 U.S. 114, 82 S. Ct. 1196 (1962). *Calbeck* involved an injury to an employee who was engaged in the work of completing construction of a vessel afloat on navi-

gable waters. Before the Longshoremen's and Harbor Workers' Act was passed, this Court had sustained the validity of a State workmen's compensation statute as applied under such circumstances. *Grant-Smith-Porter Ship Co.* v. *Rohde*, 257 U.S. 469, 42 S. Ct. 157 (1922). In *Calbeck*, the lower court therefore reasoned that the limitation of coverage under Section 903(a) to those situations where recovery "may not validly be provided by State law" excluded the application of the Act to the injured employee. This Court held, to the contrary, that the Act applies to all injuries upon navigable waters, whether or not State law also applies. The facts of *Calbeck* are not our facts; however, the *ratio decidendi* of *Calbeck* requires a holding that the Longshoremen's Act applies to dockside injuries.

In *Calbeck*, after reviewing the legislative history of the Act, this Court concluded, (borrowing the words of Judge Hutchison from *DeBardelben Coal Corp.* v. *Henderson*, 142 F.2d 481) that "the provision 'if recovery * * * may not validly be provided by state law' was placed in the Act not as a relinquishment of any part of the field which Congress could validly occupy but only to save the Act from judicial condemnation, by making it clear that it did not intend to legislate beyond its constitutional powers." Moreover, this Court said of the Act in general (again borrowing the words of Judge Hutchinson):

> "The elaborate provisions of the Act, viewed in the light of prior congressional legislation as interpreted by the Supreme Court, leaves no room

> for doubt, as it appears to us, that Congress intended to exercise to the fullest extent all the power and jurisdiction it had over the subject matter * * *. In the application of the Act, therefore, the broadest ground it permits of should be taken."

Viewed in this way, the restriction of coverage to injury occurring on "navigable waters" as well as in the limitation regarding State law, stem from a Congressional excess of caution, rather than a purpose to restrict the operation of the Act to an ambit short of federal power over the subject matter. When the Act was passed, "navigable waters" defined what was then thought to be the limit of Federal maritime authority over personal injuries, and in view of this Court's readiness to strike down legislation in the field, as evidenced by *Knickerbocker Ice Co.* v. *Stewart*, 253 U.S. 149, 40 S. Ct. 438 (1920); and *Washington* v. *W. C. Dawson & Co.*, 264 U.S. 219, 44 S. Ct. 302 (1924), the Congress was troubled with a concern to "make it clear that it did not intend to legislate beyond its constitutional powers." *Calbeck* v. *Traveler's Insurance Co.*, supra. As used in 33 U.S. C.A. § 903(a), the words "navigable waters of the United States" refer to jurisdiction, not to a geographical line.

We believe that this is the meaning of *Calbeck*, and if that is true, it is clear that dockside injuries to longshoremen employed in loading or unloading the ship are within the terms of the Longshoremen's and Harbor Workers' Act. Since *Gutierrez* v. *Water-*

man Steamship Corp., 373 U.S. 206, 83 S. Ct. 1185 (1963), and *Ryan Stevedoring Co.* v. *Pan-Atlantic S.S. Corp.*, 350 U.S. 446, 76 S. Ct. 232 (1956), the constitutionality of such an application is beyond dispute.

In view of what nearly all would regard as the desirability of an inclusive system of compensation for longshoremen, whether injured aboard ship or at dockside, we point out that there is a ground less broad than the broadest ground of *Calbeck* for holding the petitioner's injury, and many similar dockside injuries, compensable under the Act. In our case, the petitioner was injured while helping to load the ship at a point on the dock extending over the Willamette River. Small boats sometimes navigate under the dock. The Willamette River under the dock, would, absent the structure, be "navigable waters of the United States." *U.S.* v. *Monticello*, 20 Wall 430, 87 S. Ct. 391 (1874); *U. S.* v. *Holt State Bank*, 270 U.S. 49, 46 S. Ct. 197 (1926); Robinson on Admiralty (1939 Ed.) 34 et seq.

Although docks traditionally have been considered a part of the land, *Industrial Commission* v. *Nordenholt Corp.*, 259 U.S. 263, 42 S. Ct. 473 (1922), there is no constitutional impediment, especially since the enactment of the Admiralty Extension Act, 46 U.S.C.A. § 740, to an interpretation that docks are upon the "navigable waters of the United States" within the meaning of the Longshoremen's and Harbor Workers' Act. That interpretation of the Act does

no more violence to the statutory language than does an interpretation of the Death on the High Seas Act, 46 U.S.C.A. § 761 et seq., enacted before the advent of the passenger plane (March 30, 1920, c. 111, § 1,41 Stat. 537), to embrace tortious acts aboard aircraft. *D'Aleman* v. *Pan American World Airways*, 359 F.2d 493 (C.A. 2, 1958).

While we have suggested this possible alternative construction of the Act, we believe that its adoption, restricting compensation to injuries occurring over the water side of docks would, while embracing more accidents, create anomalies and excrescences of interpretation more extreme than those plaguing the administration of the Act at present. Accordingly, we submit that this Court should adhere to the rationale of *Calbeck* v. *Traveler's Insurance Co.*, and should hold that the Act covers all injuries to harborworkers which are fairly within the tort or contract admiralty jurisdiction of the United States.

Decisions of the Lower Courts

Whether or not *Calbeck* is thought controlling here, it must be apparent that an authoritative decision of this Court is required to halt a trend of decision that does violence to the Congressional purpose and is demoralizing to those whose work brings them within the ambit of the Act. There is, at present, nothing which can properly be described as a conflict among the Circuit Courts of Appeal. Those which have so far ruled upon the issue hold that injuries occurring upon a dock, without more, are not com-

pensable. *Michigan Mutual Liability Company* v. *Arrien*, 344 F.2d 640, (C.A. 2, 1965), cert. den. 382 U.S. 835 (See however, the persuasive opinion by Judge Palmieri in the District Court, 233 F. Supp. 496, S.D. N.Y., 1964, in support of a broader view); *Nicholson* v. *Calbeck, et al.*, — F.2d — (C.A. 5, Oct. 31, 1967); *McCollough* v. *The Traveler's Insurance Company, et al*, — F.2d — (C.A. 5, Aug. 9, 1967); *American Export Lines* v. *Revel*, 266 F.2d 82, 84 (C.A. 4, 1959); *O'Keeffe* v. *Atlantic Stevedoring Co.*, 354 F.2d 48, 50 (C.A. 5, 1965). Nevertheless, the decisions in this area have an unreal quality about them.

Thus, this Court has held that an injury on a marine railway 400 feet from the water's edge is compensable under the Act because the railway is a drydock. *Avondale Marine Ways, Inc.* v. *Henderson*, 346 U.S. 366, 74 S. Ct. 100 (1953). However, if a longshoreman suffers an injury on the dock while unloading or loading a ship, he is not within the coverage of the Act because the dock is an extension of land. *Houser* v. *O'Leary*, 383 F.2d 730 (C.A. 9, 1967); *Nicholson* v. *Calbeck*, — F.2d — (C.A. 5, Oct. 31, 1967). If a longshoreman is accidentally hoisted by the ship's boom and strikes his head on the dock, he is covered by the Act, because "suspended from the ship" which is "upon navigable waters." *O'Keeffe* v. *Atlantic Stevedoring Company*, 354 F.2d 48 (C.A. 5, 1967). If, however, instead of striking the dock while being lifted by a ship's boom, he is struck by the boom itself and injured, his injury is

not compensable because occurring on an extension of land. *Avery* v. *Oosting*, 245 F. Supp. 51 (D.C. Va. 1965). If the longshoreman falls from the dock and injures himself in the water, he is entitled to compensation, because his injury occurred "upon navigable waters." *Interlake S. S. Co.* v. *Nielsen*, 338 F.2d 879 (C.A. 6, 1964), cert. den. 381 U.S. 934, 85 S. Ct. 1765; *Marine Stevedoring Corp.* v. *Oosting*, 238 F. Supp. 78 (D.C. Va. 1965). If, however, he falls from the dock into the waters but injures himself by striking a part of the dock while falling, he is not covered, because the dock is an extension of land. *O'Keeffe* v. *Atlantic Stevedoring Co.*, 354 F.2d 48 (C.A. 5, 1965). On the other hand, a longshoreman injured upon a "skid" attached to a dock rather than upon the dock itself can obtain compensation because the "skid" is not a fixed part of the dock, and so is upon navigable waters. *Michigan Mutual Liability Co.* v. *Arrien*, 344 F.2d 640 (C.A. 2, 1965), cert. den. 382 U.S. 835.

During debate in the House of Representatives on the bill for the Longshoremen's and Harbor Workers' Act, Congressman LaGuardia, an "anchor man" for the proponents, argued:

> "This law simply gives the longshoremen the benefit of up-to-date legislation to cover injuries sustained in the course of their employment." (Cong. Record 5414)

Can it be said that the decisions above give effect to that purpose? We think not.

At one time it might have been thought necessary, as a matter of Constitutional construction, for the lower courts to draw distinctions of this kind in administering the Longshoremen's and Harbor Workers' Act. But as now interpreted, the Constitution requires no such distinctions and where the Constitution does not require it, Congress should not be supposed to have a purpose to demand these hypertechnicalities of interpretation. As this Court said in *Reed* v. *S.S. Yaka*, 373 U.S. 410, 83 S. Ct. 1349 (1963), after repudiating a "blind adherence to the superficial meaning of the statute":

> "We have previously said that the Longshoremen's Act 'must be liberally construed in conformance with its purpose and in a way which avoids harsh and incongruous results.'"

The interpretation we ask the Court to put upon the Act gives effect, as in *Reed*, to the Congressional purpose, while doing less violence than in *Reed* to the "superficial meaning of the statute."

CONCLUSION

The issue presented by this petition for writ of certiorari, as well as by the petition in the case of *Andrew Nicholson* v. *C. D. Calbeck*, No. 877 (October Term, 1967), and in the case of *James D. McCollough* v. *The Travelers Insurance Company, et al*, No. 788 (October Term, 1967), is of far-reaching importance to the administration of the Longshoremen's and Harbor Workers' Act and of concern to the thou-

sands of employees engaged in the vital and oftentimes hazardous work of the docks. For the reasons set forth above, this petition should be granted.

Respectfully submitted,

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